

AMENDED IN ASSEMBLY JUNE 11, 2003

AMENDED IN ASSEMBLY JUNE 4, 2003

AMENDED IN SENATE FEBRUARY 13, 2003

## SENATE BILL

**No. 1**

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### **Introduced by Senators Speier and Burton**

(Principal coauthor: Assembly Member Jackson)

### **(Coauthors: Senators Bowen, Escutia, Kuehl, and Ortiz)**

(Coauthors: Assembly Members *Chan*, Cohn, Goldberg, Hancock, Kehoe, Koretz, Laird, Leno, Lowenthal, Mullin, ~~and~~ Pavley, *and Simitian*)

December 2, 2002

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An act to add Division 1.2 (commencing with Section 4050) to the Financial Code, relating to financial privacy.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1, as amended, Speier. Financial institutions: nonpublic personal information.

Existing law provides for the regulation of banks, savings associations, credit unions, and industrial loan companies by the Department of Financial Institutions and by certain federal agencies. Existing federal law, the Gramm-Leach-Bliley Act, requires financial institutions to provide a notice to consumers relative to the use by the financial institution of nonpublic personal information, and in that regard authorizes consumers to direct that the information not be shared with nonaffiliated third parties.

This bill would enact the California Financial Information Privacy Act, which would require a financial institution, as defined, to provide a specified written form to a consumer relative to the sharing of the

consumer's nonpublic personal information, as defined. The bill would generally allow a consumer to direct the financial institution to not share the nonpublic personal information with affiliated companies or with nonaffiliated financial companies with which the financial institution has contracted to provide financial products and services, but would not restrict or prohibit the sharing of nonpublic personal information between a financial institution and its wholly owned financial institution subsidiaries or in certain other cases if both entities are regulated by the same functional regulator and are engaged in the same line of business, among other requirements. The bill would require the permission of the consumer before the financial institution could share the nonpublic personal information with other nonaffiliated companies. The bill would provide that a financial institution is not required to provide this written form to its consumers if the financial institution does not disclose any nonpublic personal information to any nonaffiliated 3rd party or to any affiliate.

This bill would provide that a financial institution shall not discriminate against or deny an otherwise qualified consumer a financial product or service because the consumer has not provided the necessary consent that would authorize the financial institution to disclose or share nonpublic personal information. The bill would require a financial institution to comply with the consumer's request regarding nonpublic personal information within 45 days of receipt of the request.

This bill would provide that a financial institution may disclose nonpublic personal information to an affiliate or a nonaffiliated 3rd party in order for it to perform certain services on behalf of the financial institution if specified requirements are met. The bill would provide other exceptions from its provisions applicable to particular situations.

This bill would provide that nonpublic personal information may be released in order to identify or locate missing children, witnesses, criminals and fugitives, parties to lawsuits, and missing heirs and that it would not change existing law regarding access by law enforcement agencies to information held by financial institutions.

This bill would also provide for disclosure of nonpublic personal information under various other specified circumstances.

This bill would provide that enactment of these provisions preempts all local agency ordinances and regulations relating to this subject.

This bill would enact other related provisions.



This bill would also provide various civil penalties for negligent, or knowing and willful violations of these provisions. The penalties under the bill would not become operative until July 1, 2004.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Division 1.2 (commencing with Section 4050) is added to the Financial Code, to read:

DIVISION 1.2. CALIFORNIA FINANCIAL  
INFORMATION PRIVACY ACT

4050. This division shall be known and may be cited as the California Financial Information Privacy Act.

4051. (a) The Legislature intends for financial institutions to provide their consumers notice and meaningful choice about how consumers' nonpublic personal information is shared or sold by their financial institutions.

(b) It is the intent of the Legislature in enacting the California Financial Information Privacy Act to afford persons greater privacy protections than those provided in Public Law 106-102, the federal Gramm-Leach-Bliley Act, and that this division be interpreted to be consistent with that purpose.

4051.5. (a) The Legislature finds and declares all of the following:

(1) The California Constitution protects the privacy of California citizens from unwarranted intrusions into their private and personal lives.

(2) Federal banking legislation, known as the Gramm-Leach-Bliley Act, which breaks down restrictions on affiliation among different types of financial institutions, increases the likelihood that the personal financial information of California residents will be widely shared among, *between, and within* companies.

(3) The policies intended to protect financial privacy imposed by the Gramm-Leach-Bliley Act are inadequate to meet the privacy concerns of California residents.

(4) Because of the limitations of these federal policies, the Gramm-Leach-Bliley Act explicitly permits states to enact privacy protections that are stronger than those provided in federal law.

(b) It is the intent of the Legislature in enacting this division:

(1) To ensure that Californians have the ability to control the disclosure of ~~personally identifiable financial~~ *what the Gramm-Leach-Bliley Act calls nonpublic personal* information for purposes other than those of the transactions into which they have entered.

(2) To achieve that control for California consumers by requiring that financial institutions that want to share information with third parties and unrelated companies seek and acquire the affirmative consent of California consumers *prior to sharing the information.*

(3) To further achieve that control for California consumers by providing consumers with the ability to prevent the sharing of financial information among affiliated companies through a simple opt-out mechanism *via a clear and understandable notice provided to the consumer.*

(4) To provide, to the maximum extent possible, consistent with the purposes cited above, a level playing field among types and sizes of businesses consistent with the objective of providing consumers control over their ~~personally identifiable financial~~ *nonpublic personal* information, including providing that those financial institutions with limited affiliate relationships may enter into agreements with other financial institutions on an “affiliate-equivalent” basis, as defined in statute, and providing that the different business models of differing financial institutions are treated in ways that provide consistent consumer control over information-sharing practices.

(5) To adopt to the maximum extent feasible, consistent with the purposes cited above, definitions consistent with federal law, so that in particular there is no change in the ability of businesses to carry out normal processes of commerce for transactions voluntarily entered into by consumers.

4052. For the purposes of this division:

(a) “Nonpublic personal information” means personally identifiable financial information (1) provided by a consumer to a financial institution, (2) resulting from any transaction with the

1 consumer or any service performed for the consumer, or (3)  
2 otherwise obtained by the financial institution. Nonpublic  
3 personal information does not include publicly available  
4 information that the financial institution has a reasonable basis to  
5 believe is lawfully made available to the general public from (1)  
6 federal, state, or local government records, (2) widely distributed  
7 media, or (3) disclosures to the general public that are required to  
8 be made by federal, state, or local law. Nonpublic personal  
9 information shall include any list, description, or other grouping  
10 of consumers, and publicly available information pertaining to  
11 them that is derived using any nonpublic personal information  
12 other than publicly available information, but shall not include any  
13 list, description, or other grouping of consumers, and publicly  
14 available information pertaining to them that is derived without  
15 using any nonpublic personal information.

16 (b) “Personally identifiable financial information” means  
17 information (1) that a consumer provides to a financial institution  
18 to obtain a product or service from the financial institution, (2)  
19 about a consumer resulting from any transaction involving a  
20 product or service between the financial institution and a  
21 consumer, or (3) that the financial institution otherwise obtains  
22 about a consumer in connection with providing a product or  
23 service to that consumer. Any personally identifiable information  
24 is financial if it was obtained by a financial institution in  
25 connection with providing a financial product or service to a  
26 consumer. Personally identifiable financial information includes  
27 all of the following:

28 (1) Information a consumer provides to a financial institution  
29 on an application to obtain a loan, credit card, or other financial  
30 product or service.

31 (2) Account balance information, payment history, overdraft  
32 history, and credit or debit card purchase information.

33 (3) The fact that an individual is or has been a consumer of a  
34 financial institution or has obtained a financial product or service  
35 from a financial institution.

36 (4) Any information about a financial institution’s consumer if  
37 it is disclosed in a manner that indicates that the individual is or has  
38 been the financial institution’s consumer.

(5) Any information that a consumer provides to a financial institution or that a financial institution or its agent otherwise obtains in connection with collecting on a loan or servicing a loan.

(6) Any personally identifiable financial information collected through an Internet cookie or an information collecting device from a Web server.

(7) Information from a consumer report.

(c) “Financial institution” means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in this state. An institution that is not significantly engaged in financial activities is not a financial institution. The term “financial institution” does not include any institution that is primarily engaged in providing hardware, software, or interactive services, provided that it is not engaged in ~~other activities governed by the federal Gramm-Leach-Bliley Act and does not engage in other~~ *the practice of debt collection, as defined in Section 1788.2 of the Civil Code, the practice of tax preparation, as defined in Section 22251 of the Business and Professions Code,* or activities for which the institution is required to acquire a charter, license, or registration from a state or federal governmental *banking, insurance, or securities* agency. The term “financial institution” does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. Sec. 2001 et seq.), provided that the entity does not sell or transfer nonpublic personal information to an affiliate or a nonaffiliated third party. The term “financial institution” does not include institutions chartered by Congress specifically to engage in a proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transactions related to a transaction of the consumer, as long as those institutions do not sell or transfer nonpublic personal information to a nonaffiliate third party. The term “financial institution” does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional ethics and applicable law from voluntarily disclosing confidential client information without the consent of the client.

(d) “Affiliate” means any entity that controls, is controlled by, or is under common control with, another entity, but does not

1 include a joint employee of the entity and the affiliate. A  
2 franchisor, including any affiliate thereof, shall be deemed an  
3 affiliate of the franchisee for purposes of this division.

4 (e) “Nonaffiliated third party” means any entity that is not an  
5 affiliate of, or related by common ownership or affiliated by  
6 corporate control with, the financial institution, but does not  
7 include a joint employee of that institution and a third party.

8 (f) “Consumer” means an individual resident of this state, or  
9 that individual’s legal representative, who obtains or has obtained  
10 from a financial institution a financial product or service to be used  
11 primarily for personal, family, or household purposes. For  
12 purposes of this division, an individual resident of this state is  
13 someone whose last known mailing address, other than an Armed  
14 Forces Post Office or Fleet Post Office address, as shown in the  
15 records of the financial institution, is located in this state. For  
16 purposes of this division, an individual is not a consumer of a  
17 financial institution solely because he or she is (1) a participant or  
18 beneficiary of an employee benefit plan that a financial institution  
19 administers or sponsors, or for which the financial institution acts  
20 as a trustee, insurer, or fiduciary, (2) covered under a group or  
21 blanket insurance policy or group annuity contract issued by the  
22 financial institution, (3) a beneficiary in a workers’ compensation  
23 plan, (4) a beneficiary of a trust for which the financial institution  
24 is a trustee, or (5) a person who has designated the financial  
25 institution as trustee for a trust, provided that the financial  
26 institution provides all required notices and rights required by this  
27 division to the plan sponsor, group or blanket insurance  
28 policyholder, or group annuity contractholder.

29 (g) “Control” means (1) ownership or power to vote 25  
30 percent or more of the outstanding shares of any class of voting  
31 security of a company, acting through one or more persons, (2)  
32 control in any manner over the election of a majority of the  
33 directors, or of individuals exercising similar functions, or (3) the  
34 power to exercise, directly or indirectly, a controlling influence  
35 over the management or policies of a company. However, for  
36 purposes of the application of the definition of control as it relates  
37 to credit unions, a credit union has a controlling influence over the  
38 management or policies of a credit union service organization  
39 (CUSO), as that term is defined by state or federal law or  
40 regulation, if the CUSO is at least 67 percent owned by credit





1 unions. For purposes of the application of the definition of control  
2 to a financial institution subject to regulation by the United States  
3 Securities and Exchange Commission, a person who owns  
4 beneficially, either directly or through one or more controlled  
5 companies, more than 25 percent of the voting securities of a  
6 company is presumed to control the company, and a person who  
7 does not own more than 25 percent of the voting securities of a  
8 company is presumed not to control the company, and a  
9 presumption regarding control may be rebutted by evidence, but  
10 in the case of an investment company, the presumption shall  
11 continue until the United States Securities and Exchange  
12 Commission makes a decision to the contrary according to the  
13 procedures described in Section 2(a)(9) of the federal Investment  
14 Company Act of 1940.

15 (h) “Necessary to effect, administer, or enforce” means the  
16 following:

17 (1) The disclosure is required, or is a usual, appropriate, or  
18 acceptable method to carry out the transaction or the product or  
19 service business of which the transaction is a part, and record or  
20 service or maintain the consumer’s account in the ordinary course  
21 of providing the financial service or financial product, or to  
22 administer or service benefits or claims relating to the transaction  
23 or the product or service business of which it is a part, and includes  
24 the following:

25 (A) Providing the consumer or the consumer’s agent or broker  
26 with a confirmation, statement, or other record of the transaction,  
27 or information on the status or value of the financial service or  
28 financial product.

29 (B) The accrual or recognition of incentives, *discounts*, or  
30 bonuses associated with the transaction or communications to  
31 eligible existing consumers of the financial institution regarding  
32 the availability of those incentives, *discounts*, and bonuses that are  
33 provided by the financial institution or another party.

34 (C) ~~With respect to~~ *In the case of* a financial institution that has  
35 issued a credit account bearing the name of a company primarily  
36 engaged in retail sales or a name proprietary to a company  
37 primarily engaged in retail sales, ~~providing the retailer, or~~  
38 ~~licensees or contractors of the retailer that provide products or~~  
39 ~~services in the name of the retailer and under a contract with the~~  
40 ~~retailer, with nonpublic personal information pertaining to the~~



~~transaction between the consumer and the retailer or those  
licensees or contractors. nothing in this division shall prohibit the  
financial institution from providing the retailer with nonpublic  
personal information as follows:~~

*(i) Where the credit account can only be used for transactions  
with the retailer or affiliates of that retailer that are also primarily  
engaged in retail sales, providing the retailer, or licensees or  
contractors of the retailer that provide products or services in the  
name of the retailer and under a contract with the retailer, with  
nonpublic personal information concerning the credit account, in  
connection with the offering or provision of the products or  
services of the retailer and those licensees or contractors.*

*(ii) Providing the retailer, or licensees or contractors of the  
retailer that provide products or services in the name of the retailer  
and under a contract with the retailer, with the names and  
addresses of the consumers in whose name the account is held and  
a record of the purchases made using the credit account from a  
business establishment, including a Web site or catalog, bearing  
the brand name of the retailer.*

(2) The disclosure is required or is one of the lawful or  
appropriate methods to enforce the rights of the financial  
institution or of other persons engaged in carrying out the financial  
transaction or providing the product or service.

(3) The disclosure is required, or is a usual, appropriate, or  
acceptable method for insurance underwriting or the placement of  
insurance products by licensed agents and brokers with authorized  
insurance companies at the consumer's request, for reinsurance,  
stop loss insurance, or excess loss insurance purposes, or for any  
of the following purposes as they relate to a consumer's insurance:

(A) Account administration.

(B) Reporting, investigating, or preventing fraud or material  
misrepresentation.

(C) Processing premium payments.

(D) Processing insurance claims.

(E) Administering insurance benefits, including utilization  
review activities.

(F) Participating in research projects.

(G) As otherwise required or specifically permitted by federal  
or state law.

(4) The disclosure is required, or is a usual, appropriate, or acceptable method, in connection with the following:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means.

(B) The transfer of receivables, accounts, or interests therein.

(C) The audit of debit, credit, or other payment information.

(5) The disclosure is required in a transaction covered by the federal Real Estate Settlement Procedures Act (12 U.S.C. Sec. 2601 et seq.) in order to offer settlement services prior to the close of escrow (as those services are defined in 12 U.S.C. Sec. 2602), provided that (A) the nonpublic personal information is disclosed for the sole purpose of offering those settlement services and (B) the nonpublic personal information disclosed is limited to that necessary to enable the financial institution to offer those settlement services in that transaction.

(i) “Financial product or service” means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to a financial activity under subsection (k) of Section 1843 of Title 12 of the United States Code (the United States Bank Holding Company Act of 1956). Financial service includes a financial institution’s evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(j) “Clear and conspicuous” means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.

(k) “Widely distributed media” means media available to the general public and includes a telephone book, a television or radio program, a newspaper, or a Web site that is available to the general public on an unrestricted basis.

4052.5. Except as provided in Section 4053, a financial institution shall not sell, share, transfer, or otherwise disclose nonpublic personal information to or with any nonaffiliated third parties without the explicit prior consent of the consumer to whom the nonpublic personal information relates.



1 4053. (a) (1) A financial institution shall not disclose to, or  
 2 share a consumer's nonpublic personal information with, any  
 3 nonaffiliated third party as prohibited by Section 4052.5, unless  
 4 ~~the financial institution has provided written notice pursuant to~~  
 5 ~~subdivision (d) to the consumer to whom the nonpublic personal~~  
 6 ~~information relates and unless the financial institution has~~  
 7 obtained a consent acknowledgment from the consumer pursuant  
 8 ~~to subdivision (d) that complies with paragraph (2) that authorizes~~  
 9 the financial institution to disclose or share the nonpublic personal  
 10 information. Nothing in this section shall prohibit or otherwise  
 11 apply to the disclosure of nonpublic personal information as  
 12 allowed in Section 4056. A financial institution shall not  
 13 discriminate against or deny an otherwise qualified consumer a  
 14 financial product or a financial service because the consumer has  
 15 not provided consent pursuant to this subdivision and Section  
 16 4052.5 to authorize the financial institution to disclose or share  
 17 nonpublic personal information pertaining to him or her with any  
 18 nonaffiliated third party. Nothing in this section shall prohibit a  
 19 financial institution from denying a consumer a financial product  
 20 or service if the financial institution could not provide the product  
 21 or service to a consumer without disclosure of the consumer's  
 22 nonpublic personal information, and the consumer has failed to  
 23 provide consent for that disclosure pursuant to this subdivision and  
 24 Section 4052.5. A financial institution shall not be liable for failing  
 25 to offer products and services to a consumer solely because that  
 26 consumer has failed to provide consent pursuant to this  
 27 subdivision and Section 4052.5 and the financial institution could  
 28 not offer the product or service without disclosing the consumer's  
 29 nonpublic personal information. Nothing in this section is  
 30 intended to prohibit a financial institution from offering incentives  
 31 or discounts to elicit a specific response to the notice.

32 (2) *A financial institution shall not utilize a form, statement, or*  
 33 *writing to obtain consent to disclose nonpublic personal*  
 34 *information to nonaffiliated third parties as required by Section*  
 35 *4052.5 and this subdivision unless the form, statement, or writing*  
 36 *meets all the following criteria:*

37 (A) *The form, statement, or writing is a separate document, not*  
 38 *attached to any other document.*

39 (B) *The form, statement, or writing is dated and signed by the*  
 40 *consumer.*

1 (C) *The form, statement, or writing clearly and conspicuously*  
2 *discloses that by signing, the consumer is consenting to the*  
3 *disclosure to nonaffiliated third parties of nonpublic personal*  
4 *information pertaining to the consumer.*

5 (D) *The form, statement, or writing clearly and conspicuously*  
6 *discloses (i) that the consent will remain in effect until revoked or*  
7 *modified by the consumer; (ii) that the consumer may revoke the*  
8 *consent at any time; and (iii) the procedure for the consumer to*  
9 *revoke consent.*

10 (E) *The form, statement, or writing clearly and conspicuously*  
11 *informs the consumer that (i) the financial institution will maintain*  
12 *the document or a true and correct copy; (ii) the consumer is*  
13 *entitled to a copy of the document upon request; and (iii) the*  
14 *consumer may want to make a copy of the document for the*  
15 *consumer's records.*

16 (b) (1) A financial institution shall not disclose to, or share a  
17 consumer's nonpublic personal information with, an affiliate  
18 unless the financial institution clearly and conspicuously notifies  
19 the consumer annually in writing pursuant to subdivision (d) that  
20 the nonpublic personal information may be disclosed to an affiliate  
21 of the financial institution and the consumer has not directed that  
22 the nonpublic personal information not be disclosed. A financial  
23 institution does not disclose information to, or share information  
24 with, its affiliate merely because information is maintained in  
25 common information systems or databases, and employees of the  
26 financial institution and its affiliate have access to those common  
27 information systems or databases, or a consumer accesses a Web  
28 site jointly operated or maintained under a common name by or on  
29 behalf of the financial institution and its affiliate, provided that  
30 where a consumer has exercised his or her right to prohibit  
31 disclosure pursuant to this division, nonpublic personal  
32 information is not *further* disclosed to or accessed or used by an  
33 affiliate except as permitted ~~under Section 4056~~ *by this division.*

34 (2) Subdivision (a) shall not prohibit the release of nonpublic  
35 personal information by a financial institution with whom the  
36 consumer has a relationship to a nonaffiliated financial institution  
37 for purposes of jointly offering a financial product or financial  
38 service pursuant to a written agreement with the financial  
39 institution that receives the nonpublic personal information  
40 provided that all of the following requirements are met:

1 (A) The financial product or service offered is a product or  
2 service of, and is provided by, at least one of the financial  
3 institutions that is a party to the written agreement.

4 (B) The financial product or service is jointly offered,  
5 endorsed, or sponsored, and clearly and conspicuously identifies  
6 for the consumer the financial institutions that disclose and receive  
7 the disclosed nonpublic personal information.

8 (C) The written agreement provides that the financial  
9 institution that receives that nonpublic personal information is  
10 required to maintain the confidentiality of the information and is  
11 prohibited from disclosing or using the information other than to  
12 carry out the joint offering or servicing of a financial product or  
13 financial service that is the subject of the written agreement.

14 (D) The financial institution that releases the nonpublic  
15 personal information has complied with subdivision ~~(e)~~ (d) and  
16 the consumer has not directed that the nonpublic personal  
17 information not be disclosed. The financial institution may, at its  
18 option, choose instead to comply with the requirements of  
19 subdivision (a).

20 (E) Notwithstanding this section, until January 1, 2005, a  
21 financial institution may disclose nonpublic personal information  
22 to a nonaffiliated financial institution pursuant to a preexisting  
23 contract with the nonaffiliated financial institution, for purposes  
24 of offering a financial product or financial service, if that contract  
25 was entered into on or before January 1, 2004. Beginning on  
26 January 1, 2005, no nonpublic personal information may be  
27 disclosed pursuant to that contract unless all the requirements of  
28 this subdivision are met.

29 (3) Nothing in this subdivision shall prohibit a financial  
30 institution from disclosing or sharing nonpublic personal  
31 information as otherwise specifically permitted by this division.

32 (4) A financial institution shall not discriminate against or deny  
33 an otherwise qualified consumer a financial product or a financial  
34 service because the consumer has directed pursuant to this  
35 subdivision that nonpublic personal information pertaining to him  
36 or her not be disclosed. A financial institution shall not be required  
37 to offer or provide products or services offered through affiliated  
38 entities solely because the consumer has directed that nonpublic  
39 personal information not be disclosed to affiliates pursuant to this  
40 subdivision and the financial institution could not offer or provide

1 the products or services to the consumer without disclosure of the  
2 consumer's nonpublic personal information. A financial  
3 institution shall not be liable for failing to offer or provide products  
4 or services offered through affiliated entities solely because the  
5 consumer has directed that nonpublic personal information not be  
6 disclosed to affiliates pursuant to this subdivision and the financial  
7 institution could not offer or provide the products or services to the  
8 consumer without disclosure of the consumer's nonpublic  
9 information. Nothing in this section shall prohibit the disclosure  
10 of nonpublic personal information allowed by Section 4056.  
11 Nothing in this section is intended to prohibit a financial institution  
12 from offering incentives or discounts to elicit a specific response  
13 to the notice set forth in this division.

14 (c) Nothing in this division shall restrict or prohibit the sharing  
15 of nonpublic personal information between a financial institution  
16 and its wholly owned financial institution subsidiaries; among  
17 financial institutions that are each wholly owned by the same  
18 financial institution; or among the insurance ~~exchanges~~ *entities* of  
19 a single insurance holding company system consisting of one or  
20 more reciprocal insurance exchanges which has a single  
21 corporation or its wholly owned subsidiaries providing  
22 management services to the reciprocal insurance exchanges,  
23 provided that in each case all of the following requirements are  
24 met:

25 (1) The financial institution disclosing the nonpublic personal  
26 information and the financial institution receiving it are regulated  
27 by the same functional regulator; provided, however, that for  
28 purposes of this subdivision, financial institutions regulated by the  
29 Office of the Comptroller of the Currency, Office of Thrift  
30 Supervision, National Credit Union Administration, or a state  
31 regulator of depository institutions shall be deemed to be regulated  
32 by the same functional regulator; and insurers admitted in this state  
33 to transact insurance and licensed to write insurance policies shall  
34 be deemed to be in compliance with this paragraph.

35 (2) The financial institution disclosing the nonpublic personal  
36 information and the financial institution receiving it ~~is~~ *are* each  
37 engaged in the same line of business. For purposes of this  
38 subdivision, "same line of business" shall be any one of the  
39 following:





1 (A) Insurance products, including annuities and variable life  
2 products.

3 (B) Banking, including lending, deposit-taking, trust and  
4 payment services, and credit services.

5 (C) Securities, including underwriting, dealing,  
6 market-making, investment advisory services, and merchant  
7 banking.

8 (3) The financial institution disclosing the nonpublic personal  
9 information and the financial institution receiving it share a  
10 common ~~element~~ *brand name* within their trademark, service  
11 mark, or trade name, which is used to identify the source of the  
12 products and services provided.

13 Nothing in this subdivision shall permit the disclosure by a  
14 financial institution of medical information, as defined in  
15 subdivision (q) of Section 791.02 of the Insurance Code, except in  
16 compliance with the requirements of this division, including the  
17 requirements set forth in subdivisions (a) and (b).

18 (d) (1) A financial institution shall be conclusively presumed  
19 to have satisfied the notice requirements of ~~this subdivision~~  
20 *subdivision (b)* if it uses the form set forth in this subdivision. The  
21 form set forth in this subdivision shall be sent by the financial  
22 institution to the consumer so that the consumer may make a  
23 decision and provide direction to the financial institution  
24 regarding the sharing of his or her nonpublic personal information.  
25 A form that does not use the specific language provided in this  
26 subdivision shall ~~instead~~ meet all of the following ~~minimum~~  
27 ~~standards for clarity and readability:~~ *requirements:*

28 (A) The form uses the same title (“IMPORTANT PRIVACY  
29 CHOICES FOR CONSUMERS”) and headers (headings  
30 designated in the form set forth below, such as “Restricting  
31 Information Sharing to the Greatest Extent Allowed By Law”).

32 (B) The titles and headers in the form are clearly and  
33 conspicuously displayed, and no text in the form is smaller than  
34 10-point type.

35 (C) The form is a separate document, except as ~~it pertains to~~  
36 ~~forms sent pursuant to Section~~ *provided by this section, and*  
37 *Sections 4054 and 4058.7.*

38 (D) The “choice boxes” provided in the form use the same  
39 language (for example, “\_\_\_\_No, ~~I prohibit you from~~ *please do*  
40 *not share ...*”).



1 (E) *The form is designed to call attention to the nature and*  
2 *significance of the information in the document.*

3 (F) *The form presents information in clear and concise*  
4 *sentences, paragraphs, and sections.*

5 (G) *The form uses short explanatory sentences (an average of*  
6 *15-20 words) or bullet lists whenever possible.*

7 (H) *The form avoids multiple negatives, legal terminology, and*  
8 *highly technical terminology whenever possible.*

9 (I) *The form avoids explanations that are imprecise and readily*  
10 *subject to different interpretations.*

11 (J) *The form achieves a minimum flesch reading ease score of*  
12 *50, as defined in Section 2689.4(a)(7) of Title 10 of the California*  
13 *Code of Regulations, in effect on March 24, 2003.*

14 (K) *The form provides wide margins, ample line spacing and*  
15 *uses boldface or italics for key words.*

16 (L) *The form is not more than one page.*

17 (2) (A) None of the instructional items appearing in  
18 ~~parentheses~~ *brackets* in the form set forth ~~below~~ *in this*  
19 *subdivision* shall appear in the form provided to the consumer, as  
20 those items are for explanation purposes only. If a financial  
21 institution does not disclose or share nonpublic personal  
22 information as described in any one or more of the first three  
23 headers of the form, the financial institution is not required to  
24 include the applicable header or headers, and the accompanying  
25 information and box, in the form it provides pursuant to this  
26 subdivision.



1 PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE  
2 INSERTED HERE

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1 (B) If a consumer selects the box associated with the header  
2 restricting information sharing to the greatest extent allowed by  
3 law, that choice shall supersede all other choices.

4 (C) A financial institution shall not be in violation of this  
5 subdivision solely because it includes in the form one or more brief  
6 examples or explanations of the purpose or purposes, or context,  
7 within which information will be shared, as long as those examples  
8 meet the clarity and readability standards set forth in paragraph  
9 (1).

10 (D) The outside of the envelope in which the form is sent to the  
11 consumer shall clearly state in 16-point boldface type  
12 “IMPORTANT PRIVACY CHOICES,” except that a financial  
13 institution sending the form to a consumer in the same envelope  
14 as a bill, account statement, ~~insurance policy~~, or application  
15 requested by the consumer does not have to include the wording  
16 “IMPORTANT PRIVACY CHOICES” on that envelope. The  
17 form shall be sent in any of the following ways:

18 (i) With a bill, other statement of account, ~~insurance policy~~, or  
19 application requested by the consumer, in which case the  
20 information required by Title V of the Gramm-Leach-Bliley Act  
21 may also be included *in the same envelope*.

22 (ii) As a separate notice or with the information required by  
23 Title V of the Gramm-Leach-Bliley Act, and including only  
24 information related to privacy.

25 (iii) With any other mailing, in which case it shall be the first  
26 page of the mailing.

27 (3) The consumer shall be provided an opportunity, ~~before~~  
28 ~~disclosure of information pursuant to this division, for 45 days~~  
29 ~~from the date of postmark or other postal verification of mailing~~  
30 ~~of the initial notice required by this subdivision~~, to direct that the  
31 nonpublic personal information not be disclosed except as  
32 otherwise permitted by this division. A consumer may direct at any  
33 time that his or her nonpublic personal information not be  
34 disclosed, except as otherwise permitted by this division. A  
35 financial institution shall comply with a consumer’s directions  
36 concerning the sharing of his or her nonpublic personal  
37 information within 45 days of receipt by the financial institution.  
38 When a consumer directs that nonpublic personal information not  
39 be disclosed, that direction is in effect until otherwise stated by the  
40 consumer.

1 (4) A financial institution may elect to comply with the  
2 requirements of subdivision (a) with respect to disclosure of  
3 nonpublic personal information to an affiliate or with respect to  
4 nonpublic personal information disclosed pursuant to paragraph  
5 (2) of subdivision (b).

6 (5) If a financial institution does not have a continuing  
7 relationship with a consumer other than the initial transaction in  
8 which the product or service is provided, no annual disclosure  
9 requirement exists pursuant to this section as long as the financial  
10 institution provides the consumer with the form required by this  
11 section at the time of the initial transaction. As used in this section,  
12 “annually” means at least once in any period of 12 consecutive  
13 months during which that relationship exists. The financial  
14 institution may define the 12-consecutive-month period, but shall  
15 apply it to the consumer on a consistent basis. If, for example, a  
16 financial institution defines the 12-consecutive-month period as a  
17 calendar year and provides the annual notice to the consumer once  
18 in each calendar year, it complies with the requirement to send the  
19 notice annually.

20 (6) A financial institution with assets in excess of twenty-five  
21 million dollars (\$25,000,000) shall include a self-addressed  
22 ~~postage-paid first class business reply~~ return envelope with the  
23 notice. A financial institution with assets of up to and including  
24 twenty-five million dollars (\$25,000,000) shall include a  
25 self-addressed return envelope with the notice. In addition to the  
26 return envelope required by this paragraph, a financial institution  
27 may offer additional means for consumers to communicate their  
28 privacy choices, such as calling a toll-free number, sending a  
29 facsimile to a toll-free telephone number, or using electronic  
30 means. A financial institution shall clearly and conspicuously  
31 disclose in the form required by this subdivision the information  
32 necessary to direct the consumer on how to communicate his or her  
33 choices, including the toll-free or facsimile number or Web site  
34 address that may be used, if those means of communication are  
35 offered by the financial institution.

36 (7) If the notice sent by a financial institution deviates from the  
37 notice included in this subdivision, a financial institution shall file  
38 a copy of the initial notice or notices required by this subdivision  
39 with the Attorney General. No subsequent filing is required until  
40 the financial institution modifies the notice, in which case a copy



of the notice as modified shall be filed with the Attorney General. Nothing in this paragraph shall be construed to require that a financial institution file with the Attorney General a copy of the notice or notices it provides to consumers more often than once in each calendar year. *The Attorney General may approve for use by a financial institution a notice which deviates from the notice included in paragraph (2) prior to use by that financial institution, as long as the notice complies with the provisions of subparagraphs (A) to (L), inclusive, of paragraph (1).*

(8) A financial institution may provide a joint notice from it and one or more of its affiliates or other financial institutions, as identified in the notice, so long as the notice is accurate with respect to the financial institution and the affiliates and other financial institutions.

(e) Nothing in this division shall prohibit a financial institution from marketing its own products and services or the products and services of affiliates or nonaffiliated third parties to customers of the financial institution as long as (1) nonpublic personal information is not disclosed in connection with the delivery of the applicable marketing materials to those customers except as permitted by Section 4056 and (2) in cases in which the applicable nonaffiliated third party may extrapolate nonpublic personal information about the consumer responding to those marketing materials, the applicable nonaffiliated third party has signed a contract with the financial institution under the terms of which (A) the nonaffiliated third party is prohibited from using that information for any purpose other than the ~~purpose~~ *transaction* for which it was provided, ~~which includes a prohibition on multiple uses of that information for different offerings to the consumer,~~ and (B) the financial institution has the right by audit, inspections, or other means to verify the nonaffiliated third party's compliance with that contract.

4053.5. Except as otherwise provided in this division, an entity that receives nonpublic personal information from a financial institution under this division shall not disclose this information to any other entity, unless the disclosure would be lawful if made directly to the other entity by the financial institution. An entity that receives nonpublic personal information pursuant to any exception set forth in Section 4056 shall not use or disclose the information except in the ordinary course of

1 business to carry out the activity covered by the exception under  
2 which the information was received.

3 4054. (a) Nothing in this division shall require a financial  
4 institution to provide a written notice to a consumer pursuant to  
5 Section 4053 if the financial institution does not disclose  
6 nonpublic personal information to any nonaffiliated third party or  
7 to any affiliate, except as allowed in this division.

8 (b) A notice provided to a member of a household pursuant to  
9 Section 4053 shall be considered notice to all members of that  
10 household unless that household contains another individual who  
11 also has a separate account with the financial institution.

12 (c) (1) The requirement to send a written notice to a consumer  
13 may be fulfilled by electronic means if the following requirements  
14 are met:

15 (A) The notice, and the manner in which it is sent, meets all of  
16 the requirements for notices that are required by law to be in  
17 writing, as set forth in Section 101 of the federal Electronic  
18 Signatures in Global and National Commerce Act.

19 (B) All other requirements applicable to the notice, as set forth  
20 in this division, are met, including, but not limited to, requirements  
21 concerning content, timing, form, and delivery. An electronic  
22 notice sent pursuant to this section is not required to include a  
23 return envelope.

24 (C) The notice is delivered to the consumer in a form the  
25 consumer may keep.

26 (2) A notice that is made available to a consumer, and is not  
27 delivered to the consumer, does not satisfy the requirements of  
28 paragraph (1).

29 (3) Any electronic consumer reply to an electronic notice sent  
30 pursuant to this division is effective. A person that electronically  
31 sends a notice required by this division to a consumer may not by  
32 contract, or otherwise, eliminate the effectiveness of the  
33 consumer's electronic reply.

34 (4) This division modifies the provisions of Section 101 of the  
35 federal Electronic Signatures in Global and National Commerce  
36 Act. However, it does not modify, limit, or supersede the  
37 provisions of subsection (c), (d), (e), (f), or (h) of Section 101 of  
38 the federal Electronic Signatures in Global and National  
39 Commerce Act, nor does it authorize electronic delivery of any





notice of the type described in subsection (b) of Section 103 of that federal act.

4054.6. (a) When a financial institution and an organization or business entity that is not a financial institution have an agreement to issue a credit card in the name of the organization or business entity (“affinity card”), the financial institution shall be permitted to disclose to the organization or business entity in whose name the card is issued only the following information pertaining to the financial institution’s customers who are in receipt of the affinity card: (1) name and address, *of those who accepted the affinity card, the disclosure of which shall not constitute a violation of this division*, (2) electronic mail address, and (3) record of purchases made using the affinity card in a business establishment, including a Web site, bearing the brand name of the organization or business entity, provided all of the following requirements are met:

~~(a) requirements of subdivision (b) are met.~~

(b) The disclosures specified in subdivision (a) shall be permitted if the following requirements are met:

(1) The financial institution has provided ~~the notice required by this division to the consumer~~, as it relates to paragraph (3) of subdivision (a), the consumer the notice required by paragraph (2) of subdivision (d) of Section 4053 or, if that notice is not used, a notice meeting the requirements of paragraph (1) of subdivision (d) of Section 4053, and the consumer has not directed that nonpublic personal information not be disclosed, *except that the disclosure of the name and address of those in receipt of the affinity card is allowed. The sharing or disclosing of any information beyond that provided for in this section shall be prohibited unless the financial institution has received prior consent from the consumer pursuant to paragraph (2) of subdivision (a) of Section 4053.*

~~(b)~~

(2) The financial institution has a contractual agreement with the organization or business entity that requires the organization or entity in whose name the affinity card is issued to maintain the confidentiality of the nonpublic personal information and prohibits the entity in whose name the affinity card is issued from using the information for any purposes other than verifying membership, verifying the affinity cardholder’s address, or

1 offering the organization or entity's own products or services to the  
2 cardholder. Nothing in this section shall prohibit the disclosure of  
3 nonpublic personal information allowed by Section 4056.

4 ~~(e)~~

5 (3) The customer list is not disclosed in any way that reveals or  
6 permits extrapolation of any additional nonpublic personal  
7 information about any customer on the list.

8 ~~(d)~~

9 (4) If the organization or business entity in whose name the  
10 *affinity* card is issued sends any message to any electronic mail  
11 addresses obtained pursuant to this section, the message shall  
12 include at least both of the following:

13 ~~(1)~~

14 (A) The identity of the sender of the message.

15 ~~(2)~~

16 (B) A cost-free means for the recipient to notify the sender not  
17 to electronically mail any further messages to the recipient.

18 4056. (a) This division shall not apply to information that is  
19 not personally identifiable to a particular person.

20 (b) Sections 4052.5, 4053, and 4054 shall not prohibit the  
21 release of nonpublic personal information under the following  
22 circumstances:

23 (1) The nonpublic personal information is necessary to effect,  
24 administer, or enforce a transaction requested or authorized by the  
25 consumer, or in connection with servicing or processing a financial  
26 product or service requested or authorized by the consumer, or in  
27 connection with maintaining or servicing the consumer's account  
28 with the financial institution, or with another entity as part of a  
29 private label credit card program or other extension of credit on  
30 behalf of that entity, or in connection with a proposed or actual  
31 securitization or secondary market sale, including sales of  
32 servicing rights, or similar transactions related to a transaction of  
33 the consumer.

34 (2) The nonpublic personal information is released with the  
35 consent of or at the direction of the consumer.

36 (3) The nonpublic personal information is:

37 (A) Released to protect the confidentiality or security of the  
38 financial institution's records pertaining to the consumer, the  
39 service or product, or the transaction therein.



1 (B) Released to protect against or prevent actual or potential  
2 fraud, identity theft, unauthorized transactions, claims, or other  
3 liability.

4 (C) Released for required institutional risk control, or for  
5 resolving customer disputes or inquiries.

6 (D) Released to persons holding a legal or beneficial interest  
7 relating to the consumer, including for purposes of debt collection.

8 (E) Released to persons acting in a fiduciary or representative  
9 capacity on behalf of the consumer.

10 (4) The nonpublic personal information is released to provide  
11 information to insurance rate advisory organizations, guaranty  
12 funds or agencies, applicable rating agencies of the financial  
13 institution, persons assessing the institution's compliance with  
14 industry standards, and the institution's attorneys, accountants,  
15 and auditors.

16 (5) The nonpublic personal information is released to the extent  
17 specifically required or specifically permitted under other  
18 provisions of law and in accordance with the Right to Financial  
19 Privacy Act of 1978 (12 U.S.C. Sec. 3401 et seq.), to law  
20 enforcement agencies, including a federal functional regulator, the  
21 Secretary of the Treasury with respect to subchapter II of Chapter  
22 53 of Title 31, and Chapter 2 of Title I of Public Law 91-508 (12  
23 U.S.C. Secs. 1951-1959), the California Department of Insurance  
24 or other state insurance regulators, or the Federal Trade  
25 Commission, and self-regulatory organizations, or for an  
26 investigation on a matter related to public safety.

27 (6) The nonpublic personal information is released in  
28 connection with a proposed or actual sale, merger, transfer, or  
29 exchange of all or a portion of a business or operating unit if the  
30 disclosure of nonpublic personal information concerns solely  
31 consumers of the business or unit.

32 (7) The nonpublic personal information is released to comply  
33 with federal, state, or local laws, rules, and other applicable legal  
34 requirements; to comply with a properly authorized civil,  
35 criminal, administrative, or regulatory investigation or subpoena  
36 or summons by federal, state, or local authorities; or to respond to  
37 judicial process or government regulatory authorities having  
38 jurisdiction over the financial institution for examination,  
39 compliance, or other purposes as authorized by law.

(8) When a financial institution is reporting a known or suspected instance of elder or dependent adult financial abuse or is cooperating with a local adult protective services agency investigation of known or suspected elder or dependent adult financial abuse pursuant to Article 3 (commencing with Section 15630) of Chapter 11 of Part 3 of Division 9 of the Welfare and Institutions Code.

(9) The nonpublic personal information is released to an affiliate or a nonaffiliated third party in order for the affiliate or nonaffiliated third party to perform business or professional services, such as printing, mailing services, data processing or analysis, customer surveys, or offering the financial institution's own products and services, on behalf of the financial institution, provided that all of the following requirements are met:

(A) The services to be performed by the affiliate or nonaffiliated third party could lawfully be performed by the financial institution.

(B) There is a written contract between the affiliate or nonaffiliated third party and the financial institution that prohibits the affiliate or nonaffiliated third party, as the case may be, from disclosing or using the nonpublic personal information other than to carry out the purpose for which the financial institution disclosed the information, as set forth in the written contract.

(C) The nonpublic personal information provided to the affiliate or nonaffiliated third party is limited to that which is ~~reasonably~~ necessary for the affiliate or nonaffiliated third party to perform the services contracted for on behalf of the financial institution.

(D) The financial institution does not receive any payment from or through the affiliate or nonaffiliated third party in connection with, or as a result of, the release of the nonpublic personal information.

(10) The nonpublic personal information is released to identify or locate missing and abducted children, witnesses, criminals and fugitives, parties to lawsuits, parents delinquent in child support payments, organ and bone marrow donors, pension fund beneficiaries, and missing heirs.

(11) The nonpublic personal information is released to a real estate appraiser licensed or certified by the state for submission to central data repositories such as the California Market Data

1 Cooperative, and the nonpublic personal information is compiled  
2 strictly to complete other real estate appraisals and is not used for  
3 any other purpose.

4 (12) The nonpublic personal information is released as  
5 required by Title III of the federal United and Strengthening  
6 America by Providing Appropriate Tools Required to Intercept  
7 and Obstruct Terrorism Act of 2001 (USA Patriot Act; P.L.  
8 107-56).

9 (13) The nonpublic personal information is released either to  
10 a consumer reporting agency pursuant to the Fair Credit Reporting  
11 Act (15 U.S.C. Sec. 1681 et seq.) or from a consumer report  
12 reported by a consumer reporting agency.

13 (c) Nothing in this division is intended to change existing law  
14 relating to access by law enforcement agencies to information held  
15 by financial institutions.

16 4056.5. (a) The provisions of this division do not apply to any  
17 person or entity that meets the requirements of paragraph (1) or (2)  
18 below. However, when nonpublic personal information is being or  
19 will be shared by a person or entity meeting the requirements of  
20 paragraph (1) or (2) with an affiliate or nonaffiliated third party,  
21 this division shall apply.

22 (1) The person or entity is licensed in one or both of the  
23 following categories and is acting within the scope of the  
24 respective license or certificate:

25 (A) As an insurance producer, licensed pursuant to Chapter 5  
26 (commencing with Section 1621), Chapter 6 (commencing with  
27 Section 1760), or Chapter 8 (commencing with Section 1831) of  
28 Division 1 of the Insurance Code, as a registered investment  
29 adviser pursuant to Chapter 3 (commencing with Section 25230)  
30 of Part 3 of Division 1 of Title 4 of the Corporations Code, or as  
31 an investment adviser pursuant to Section 202(a)(11) of the federal  
32 Investment Advisers Act of 1940.

33 (B) Is licensed to sell securities by the National Association of  
34 Securities Dealers (NASD).

35 (2) The person or entity meets the requirements in paragraph  
36 (1) and has a written contractual agreement with another person or  
37 entity described in paragraph (1) and the contract clearly and  
38 explicitly includes the following:

1 (A) The rights and obligations between the licensees arising  
2 out of the business relationship relating to insurance or securities  
3 transactions.

4 (B) An explicit limitation on the use of nonpublic personal  
5 information about a consumer to transactions authorized by the  
6 contract and permitted pursuant to this division.

7 (C) A requirement that transactions specified in the contract  
8 fall within the scope of activities permitted by the licenses of the  
9 parties.

10 (b) The restrictions on disclosure and use of nonpublic personal  
11 information, and the requirement for notification and disclosure  
12 provided in this division, shall not limit the ability of insurance  
13 producers and brokers to respond to written or electronic,  
14 including telephone, requests from consumers seeking price  
15 quotes on insurance products and services or to obtain competitive  
16 quotes to renew an existing insurance contract, provided that any  
17 nonpublic personal information disclosed pursuant to this  
18 subdivision shall not be used or disclosed except in the ordinary  
19 course of business in order to obtain those quotes.

20 *(c) The disclosure or sharing of nonpublic personal*  
21 *information from an insurer, as defined in Section 23 of the*  
22 *Insurance Code, to an exclusive agent, defined for purposes of this*  
23 *division as a licensed agent or broker pursuant to Chapter 5*  
24 *(commencing with Section 1621), Chapter 5A (commencing with*  
25 *Section 1759), Chapter 6 (commencing with Section 1760),*  
26 *Chapter 7 (commencing with Section 1800) or Chapter 8*  
27 *(commencing with Section 1831) of the Insurance Code whose*  
28 *contractual or employment relationship requires that the agent*  
29 *offer only the insurer's policies for sale or whose contractual or*  
30 *employment relationship with an insurer gives the insurer the right*  
31 *of first refusal for all policies of insurance by the agent, and who*  
32 *may only share information with the insurer with whom the agent*  
33 *has a contractual or employment relationship as described above,*  
34 *is not a violation of this division provided that the disclosure or*  
35 *sharing of nonpublic personal information may be limited by the*  
36 *consumer pursuant to any action taken in relation to subdivision*  
37 *(d) of Section 4053.*

38 4057. (a) An entity that negligently discloses or shares  
39 nonpublic personal information in violation of this division shall  
40 be liable, irrespective of the amount of damages suffered by the



consumer as a result of that violation, for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation. However, *if the disclosure or sharing results in the release of nonpublic personal information of more than one individual*, the total civil penalty awarded pursuant to this subdivision shall not exceed five hundred thousand dollars (\$500,000) ~~per occurrence~~.

(b) An entity that knowingly and willfully obtains, discloses, shares, or uses nonpublic personal information in violation of this division shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) ~~per violation~~ *individual violation, irrespective of the amount of damages suffered by the consumer as a result of that violation*.

(c) In determining the penalty to be assessed pursuant to a violation of this division, the court shall take into account the following factors:

- (1) The total assets and net worth of the violating entity.
- (2) The nature and seriousness of the violation.
- (3) The persistence of the violation, including any attempts to correct the situation leading to the violation.
- (4) The length of time over which the violation occurred.
- (5) The number of times the entity has violated this division.
- (6) The harm caused to consumers by the violation.
- (7) The level of proceeds derived from the violation.
- (8) The impact of possible penalties on the overall fiscal solvency of the violating entity.

(d) In the event a violation of this division results in the identity theft of a consumer, as defined by Section 530.5 of the Penal Code, the civil penalties set forth in this section shall be doubled.

(e) *The civil penalty pursuant to this section shall be assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:*

- (1) *The Attorney General.*
- (2) *Any district attorney.*
- (3) *Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.*
- (4) *Any city attorney of a city.*
- (5) *Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.*



1 (6) A city prosecutor in any city having a full-time city  
2 prosecutor or, with the consent of the district attorney, by a city  
3 attorney in any city and county.

4 (f) This section shall become operative on and after July 1,  
5 2004, for acts in violation of this division that occur on and after  
6 July 1, 2004. *No penalty shall be applicable for violations of this*  
7 *division occurring prior to July 1, 2004.*

8 4058. Nothing in this division shall be construed as altering or  
9 annulling the authority of any department or agency of the state to  
10 regulate any financial institution subject to its jurisdiction.

11 4058.5. This division shall preempt and be exclusive of all  
12 local agency ordinances and regulations relating to the use and  
13 sharing of nonpublic personal information by financial  
14 institutions. This section shall apply both prospectively and  
15 retroactively.

16 4058.7. Nothing in this division shall prevent an insurer, as  
17 defined in Section 23 of the Insurance Code, from combining the  
18 form required by Section 4053 with the form required pursuant to  
19 Article 6.6 (commencing with Section 791) of Chapter 1 of Part  
20 2 of Division 1 of the Insurance Code and state regulations  
21 implementing the provisions of that article, provided that the  
22 combined form meets the ~~clarity and readability~~ requirements  
23 contained in paragraph (1) of subdivision (d) of Section 4053.

24 4059. The provisions of this division shall be severable, and  
25 if any phrase, clause, sentence, or provision is declared to be  
26 invalid or is preempted by federal law or regulation, the validity  
27 of the remainder of this division shall not be affected thereby.

